

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

| | | |
|---|---|------------------------------|
| In Re: |) | |
| |) | DOCKET NO. 2005-358-C |
| dPi Teleconnect, L.L.C. v. |) | |
| BellSouth Telecommunications, Inc. |) | |

DIRECT TESTIMONY OF TOM O'ROARK

1 **Q. Please tell us who you are and give a little background about yourself.**

2 A. My name is Tom O’Roark. I serve as dPi’s CFO and, for now, chief executive
3 officer. Since the departure of dPi’s Brian Bolinger, dPi’s former vice president of legal
4 and regulatory affairs, I am the one who has taken the lead in dealing with disputes over
5 promotion credits with AT&T. Prior to my involvement, Brian Bolinger along with
6 Steve Watson of Lost Key Telecom Inc. (which functions as dPi’s billing and collections
7 agent for promotions) headed up this effort on behalf of dPi, and thus had most of the
8 detailed interaction with AT&T; I was kept appraised of events as they developed by
9 Brian and/or Steve.

10 **Q. Please give a little background on dPi Teleconnect and describe the history of dPi**
11 **Teleconnect’s dispute with AT&T.**

12 A. dPi Teleconnect is a competitive telecommunications company authorized to
13 provide intrastate local exchange and interexchange telecommunications services in
14 South Carolina. dPi provides telecommunications services primarily to residential
15 customers. This case involves only dPi Teleconnect’s resale operations and relationship
16 with AT&T. AT&T is required by law and by contract to make available for resale any

1 promotion that AT&T makes available to its customers for an extended period of time.

2 This case stems from AT&T's failure to do so.

3 **Q. What do you mean when you say "AT&T is required by law to make available for**
4 **resale any promotion that AT&T makes available to its customers"?**

5 A. I don't pretend to be an expert in Federal telecommunications law, but I do know
6 the more basic provisions that apply to our business. So I know that federal law requires
7 AT&T to make the same offers it extends to its retail customers available to its resellers
8 like dPi. For example, federal law provides, among other things, the following:

9 -- 47 U.S.C. § 251(c)(4)(A). ILECs have the duty to "offer for resale at wholesale
10 rates any telecommunications service that the carrier provides at retail to
11 subscribers who are not telecommunications carriers."

12 -- 47 U.S.C. § 251(c)(4)(B). ILECS have a duty not to "prohibit, and not to impose
13 unreasonable or discriminatory conditions or limitations on, the resale of such
14 telecommunications service."

15 I also know that the FCC has discussed promotion issues at length in various
16 dockets, notably including the FCC's 1996 *Local Competition Order*.¹ In the *Local*
17 *Competition Order*, the FCC explained

18 [t]he ability of [I]LECs to impose resale restrictions and
19 conditions is likely to be evidence of market power and may
20 reflect an attempt by [I]LECTs to preserve their market position.
21 In a competitive market, an individual seller (an [I]LEC) would
22 not be able to impose significant restrictions and conditions on
23 buyers because such buyers turn to other sellers. Recognizing
24 that [I]LECs possess market power, Congress prohibited
25 unreasonable restrictions and conditions on resale. *Local*
26 *Competition Order*, 11 FCC Rcd at 15966, ¶939.

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15954, ¶907 (rel. Aug. 8, 1996) ("*Local Competition Order*").

1 Indeed, in the *Local Competition Order* the Commission expressly recognizes
2 that ILECs could use promotions like AT&T's to manipulate their retail rates and
3 effectively avoid their resale obligations. Consequently, the Commission found that the
4 resale requirement of Section 251(c)(4) of the Act

5 ***makes no exception for promotional or discounted offerings***, including
6 contract and other customer-specific offerings. We therefore conclude
7 that no basis exists for creating a general exemption from the wholesale
8 requirement for all promotional or discount service offerings made by
9 incumbent LECs. A contrary result would permit incumbent LECs to
10 avoid the statutory resale obligation by shifting their customers to
11 nonstandard offerings, thereby eviscerating the resale provisions of the
12 1996 Act. *Local Competition Order*, 11 FCC Rcd at 15970, ¶948
13 (footnote omitted)(emphasis added).

14 The FCC concluded that resale restrictions are presumptively unreasonable and
15 that an ILEC can rebut that presumption but only if the restrictions are “narrowly
16 tailored.” *Local Competition Order*, 11 FCC Rcd at 15966, ¶939. Accordingly, in the
17 *Arkansas Preemption Order*, the FCC preempted an Arkansas statute that was contrary
18 to the Commission’s implementation of Section 251(c)(4)(B), stating:

19
20 In connection with offering to competing carriers a retail service that an
21 incumbent LEC markets to its end-user consumers at a promotional price
22 for longer than 90 days, the second sentence of 9(d) allows the incumbent
23 LEC to apply the wholesale discount to the ordinary retail rate, whereas
24 ***our rules require the incumbent LEC to apply the wholesale discount***
25 ***to the special reduced rate.***²

² *In the Matter of Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, Memorandum Opinion and Order, 14 FCC Rcd 21579, ¶47 (rel. Dec. 23, 1999) (“*Arkansas Preemption Order*”)(footnotes omitted)(emphasis added).

1 Finally, the rules which the Commission adopted in the *Local Competition Order*
2 plainly state that all promotional offerings must be made available for resale, other than
3 those promotions expressly provided for in Section 51.613 (cross-class and short term
4 promotions), and that ILECs are prohibited from restricting, limiting or refusing in the
5 first instance to make telecommunications service available for resale. The FCC rules
6 on resale are found in the Code of Federal Regulations (“CFR”) at Title 47
7 (Telecommunication), Part 51 (Interconnection), Subpart G (Resale), sections 51.601 -
8 51.617. In relevant part, the FCC rules provide:

9 **47 CFR § 51.605 Additional obligations of incumbent local exchange carriers.**

10 (a) An incumbent LEC shall ***OFFER*** to any requesting telecommunications carrier
11 **any telecommunications service that the incumbent LEC *OFFERS* on a retail basis**
12 **to subscribers that are not telecommunications carriers for resale at wholesale rates**

13 ***

14 (e) Except as provided in §51.613, ***an incumbent LEC shall not impose restrictions on***
15 **the *resale*** by a requesting carrier of telecommunications services offered by the
16 incumbent LEC.

17 **47 C.F.R. § 51.613 Restrictions on resale.**

18 (a) Notwithstanding §51.605(b), the following types of restrictions on resale may be
19 imposed:

20 (1) Cross-class selling. [an ILEC may prohibit CLECs from reselling a promotion
21 to customers at large if the ILEC makes the promotional offer only to a certain
22 class of customers – i.e., if the ILEC’s promotion is directed to residential
23 customers, the CLEC cannot cross sell it to business class customers.]

24 (2) Short term promotions. An incumbent LEC shall apply the wholesale discount
25 to the ordinary rate for a retail service rather than a special promotional rate only
26 if:

(i) Such promotions involve rates that will be in effect for no more than 90 days; and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

I have added the emphasis placed on the relevant language cited above.

Q. What does the contract between AT&T and dPi say? Something different from federal law?

A. No. Actually, the contract clearly states that it is subject to state and federal law, and that AT&T will make available to resellers like dPi the same services AT&T offers at retail. Among other things, the parties' contract provides in relevant part the following:

-- That the parties wish to interconnect "pursuant to Sections 251 and 252 of the Act" GTC p.1;

-- Parity: "When DPI purchases Telecommunications Services from BellSouth pursuant to ... this Agreement for the purposes of resale to End Users, such services shall be be ... subject to the same conditions... that BellSouth provides to its ...End Users." GTC p. 3

-- Governing Law: "... **this agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC....**" GTC p. 15.

-- Resale Attachment's General Provision sections 3.1: p. 4: "...**Subject to effective and applicable FCC and Commission rules** and orders, BellSouth shall make available to DPI for resale those telecommunications services BellSouth makes available...to customers who are not telecommunications carriers."

1 **Q. Has AT&T performed consistent with its legal and contractual requirements as you**
2 **understand them?**

3 A. No. This case arises because of AT&T's refusal to extend its promotional pricing
4 to dPi. The parties' dispute centers on credits which are due from AT&T to dPi
5 Teleconnect as a result of dPi Teleconnect's reselling of services subject to AT&T
6 promotional discounts. AT&T has over the past months and years sold its retail services
7 at a discount to its end users under various promotions that have lasted for more than 90
8 days. dPi Teleconnect is entitled to purchase and resell those same services at the
9 promotional rate, less the wholesale discount. As a practical matter, dPi Teleconnect has
10 bought these services at the regular retail rate less the resale discount, then been credited
11 the difference between that rate and the promotional rate pursuant to "promotion credit
12 requests."

13 **Q. How does the "promotion process" work?**

14 A. To understand the dispute, one must understand its origins – namely, AT&T's
15 "promotion process" which, at the time relevant to this case, operated in practice if not
16 by design to enrich AT&T as the expense of its small competitors.

17 At the times relevant to this complaint, AT&T was supposedly "unable" to bill
18 resellers the correct amount (including promotional discounts) for the services they
19 ordered when the order was submitted. However, it was able to bill its *retail* customers
20 correctly.

21 Also, AT&T/SBC's systems in the midwest and southwest *do* allow one to apply
22 for a promotional credit as a part of the provisioning order, and reject the order if it does

1 not qualify for the promotion. The credit is applied to the price immediately and the
2 discount reflected on the same bill; the CLEC pays no more than what it actually owes
3 for the service from the beginning. So there is no technical reason why CLECs cannot
4 be billed correctly for the service they acquire from AT&T.

5 Nevertheless, in the former BellSouth regions AT&T *automatically overcharges*
6 every reseller for every service the reseller orders that is subject to a promotional
7 discount. Then AT&T shifts the burden on to the reseller to (1) figure out how much
8 AT&T has overcharged the reseller, and (2) dispute AT&T's bills accordingly. If a
9 CLEC is not aware that this is how the system is supposed to work and does not know
10 to apply for these promotions, AT&T retains their money.

11 For those CLECs who generally understand that they must apply for these credits,
12 AT&T's system makes it as difficult as possible for the reseller to dispute the bills to
13 AT&T's satisfaction. First, the credit request must be meticulously documented, listing
14 details of every order for which credit is requested. But getting the data to populate these
15 forms is a Herculean task in itself: it must come from AT&T's billing and ordering data,
16 which AT&T has traditionally provided to resellers only on either a paper bill, or
17 electronically in a "DAB" file, which has data locks built into it, making downloading
18 of the raw data exceptionally difficult. To make matters worse, in dPi's experience next
19 to no one at AT&T can explain how to get the data out of the "DAB" files, because
20 AT&T does not maintain its own data in such files, and its employees simply are not
21 equipped with the knowledge to answer questions about how to unlock its secrets.
22 Figuring out how, as a practical matter, to apply for these credits takes a large amount of

1 resources in time and money. Some CLECs appear to have simply thrown their hands
2 in the air and given up.

3 Next, if a CLEC spends the time and resources to figure out a way to get at their
4 data, and create systems for electronically scouring it to identify those orders that ought
5 to qualify for promotional credits, and write and re-write programs that will populate
6 AT&T's forms (which it changes from time to time as it sees fit), AT&T will examine
7 the requests for credit to see if it will honor them. There is no deadline for AT&T to act
8 on these credit requests. When it finally approves or denies credits – which can take
9 months – it makes no explanation for what credit requests it accepts, and what credits it
10 rejects, and why. Thus, if the credit request is rejected, the CLEC has no way of auditing
11 the rejection to see if it is merited or not. But note that even if the credit is accepted,
12 AT&T has kept the CLEC's money for months, without interest, before returning it.

13 The system is backwards, failure prone, and grossly inefficient. And at every step
14 of the way, whether consciously designed to that end or not, the system works to enrich
15 AT&T at the CLEC's expense.

16 **Q. What is Steve Watson's company, Lost Key,'s role in this case?**

17 A. Because of the above mentioned difficulties involved in extracting and presenting
18 the data used to calculate these promotion credit requests, dPi hired Lost Key to apply
19 for promotional credits from AT&T on dPi's behalf. At any given time, AT&T has a
20 number of promotions going at once. As dPi's agent in this process, Lost Key reviews
21 the data AT&T provides dPi regarding the services AT&T has sold dPi, and calculates
22 which promotions dPi is entitled to under the promotions then in effect. Lost Key then

1 submits requests for promotional credits on dPi's behalf, and AT&T evaluates or audits
2 those requests and issues or denies credit as it sees fit.

3 **Q. What promotions are involved in this case?**

4 A. Although dPi has a number of promotion related disputes, this case will focus on
5 the dispute about dPi's eligibility for a single particular promotion – the Line Connection
6 Charge Waiver (“LCCW”) promotion – as this argument encompassed the lion's share
7 of the total dollars in dispute in South Carolina apart from the cash back promotions.

8 **Q. What's the Line Connection Charge Waiver promotion?**

9 A. Generally, the Line Connection Charge Waiver promotion provides that
10 BellSouth will waive the line connection charge for customers who switch to Bellsouth
11 and take at least basic service with two Touchstar features – at least, two features are
12 required according to BellSouth's documents. *See* dPi's Exhibit 2, BellSouth's
13 documents establishing qualifying criteria for the promotion.

14 This promotion has been around for a couple of years; dPi's claims go back to
15 January of 2004.

16 **Q. What does it take to qualify for the LCCW promotion?**

17 All – *ALL* – a CLEC like dPi has to do to qualify for the line connection charge
18 waiver is purchase Basic Service with one or more TouchStar features.³ Using the words

3

See dPi Exhibit 3, a screenshot taken from Bellsouth's website during the summer of 2005. In relevant part, the promotion provides:

Connection Fee Waived

Customers who switch their local service to Bellsouth from another provider and purchase Bellsouth® Complete Choice®, Bellsouth® Preferred Pack, or Bellsouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with Bellsouth 10 days prior to new service connection date. Offer ends December 26, 2005.

1 from Bellsouth's own promotion, dPi is entitled to the promotion because it has
2 "purchase[d] ... Bellsouth Basic Service with at least one feature" and thus has
3 "qualif[ied] for a waiver of the local service connection fee." This is because in every
4 situation in which dPi applied for the promotional credit, it ordered at least Basic Service
5 plus two or more TouchStar features, including TouchStar Blocking Features, such as
6 Block Call Return (known by its USOC "BCR"), Block Repeat Dialing (known by its
7 USOC "BRD"), and Block Call Trace (known by its USOC "HBG").⁴ These three
8 TouchStar features – BCR, BRD, and HBG – will be collectively referred to as
9 TouchStar Blocking Features.

10 **Q. Does Bellsouth agree with this interpretation of the promotional language?**

11 A. Well, it did, at least initially. We know that BellSouth initially agreed with this
12 interpretation because when Lost Key was first getting set up and running test batches
13 together, it approved all orders configured this way. In the fall of 2003, Steve Watson
14 was working with BellSouth on ways to automate the crediting process, which entailed
15 agreeing on proposed processes, then sending small batches of orders at a time to see if
16 the processes worked. By December 2003 and January 2004, we were working on the
17 LCCW promotion, and had our batches containing credit requests for orders for basic
18 service plus the TouchStar Blocking Features approved. In fact, in January, February,
19 March, and April 2004, regular batches of such orders were approved for Teleconnex (on
20 whose behalf Steve Watson was working at the time), before Teleconnex was taken by

4

dPi's basic offering always includes the TouchStar blocks. There is no dispute that dPi has ordered TouchStar blocks – the dispute is solely whether the TouchStar block features that dPi orders "qualify" as TouchStar features under the promotion because they bear no additional charge.

1 other owners and ceased doing business. Then again, in the summer of 2004, BellSouth
2 was crediting other CLECs (such as Budget Phone) with millions for promotional rates
3 for orders essentially identical to dPi's.

4 **Q. So when did you begin submitting credit requests for the LCCW promotion for**
5 **dPi?**

6 A. In August 2004, Lost Key began submitting credit requests for dPi pursuant to
7 Bellsouth's procedures, as well as for other clients. Lost Key's computer program
8 automatically scours the orders electronically reported by BellSouth, and tallies those that
9 contained new service plus two or more TouchStar features. A request for credit was
10 made pursuant to those tallies.

11 **Q. Was dPi ever credited on its promotion requests?**

12 A. No. BellSouth credited dPi only a small fraction of the amounts applied for.

13 **Q. Did any of dPi's similarly situated competitors get paid the LCCW credits?**

14 A. Yes. For some of our competitors who were also Lost Key clients, BellSouth
15 paid essentially 100% of credit applied for. For example, Budget Phone, who has a
16 claim roughly double the size of dPi's, was paid in full. Previously, BellSouth had
17 similarly paid Teleconnex in full for these promotions. These entities' product mix to
18 their end users was also essentially very similar to dPi's. However, BellSouth credited
19 dPi only about a small fraction of the amounts applied for.

20 **Q. Did BellSouth extend the LCCW promotion to its own customers taking basic**
21 **service plus the TouchStar Blocking Features?**

22 A. Yes, they did. Although BellSouth testified in both North Carolina and Florida
23 that it was its policy to never extend the LCCW promotion to its own end users taking

1 just Basic Service plus the TouchStar Blocking Features, an examination of their
2 provisioning data revealed that in fact BellSouth HAD extended the LCCW to such
3 customers.

4 Through discovery in Florida, dPi tried to determine what non-recurring charges
5 BellSouth charged its own end users who (1) ordered new basic service and (2) any two
6 of the BCR, BRD, and HBG TouchStar Blocking Features (without any other TouchStar
7 features). This data provided by BellSouth showed that from 2003 to the present, in any
8 given month, for BellSouth end users ordering basic service plus the TouchStar Blocking
9 Features, BellSouth would award the end user the LCCW promotion between 8.8% and
10 40.1% of the time. More particularly, for the time period from May 2003 to January
11 2005, new Bellsouth retail accounts created with basic service and 2 TouchStar Blocking
12 Features received the LCCW promotion between 40% and 22% of the time. Those new
13 orders not receiving the promotional pricing included orders that did not qualify because
14 they were not a “winover” or “reacquisition” (a requirement to qualify for LCCW);
15 because they were split-offs of existing accounts; or the orders were for accounts that
16 were reestablished after being disconnected – in other words, those orders not granted
17 LCC waivers were for reasons *other* than because BellSouth was not counting BCR and
18 BRD as TouchStar features. A detailed explanation of the data reviewed and the analysis
19 of that data by Steven Tepera is found in dPi’s Exhibit 8. The frequency BellSouth
20 awarded its end users LCCW is shown on three graphs in dPi’s Exhibit 6.

21 Admittedly, the above information was taken from BellSouth’s operations in
22 Florida; an identical discovery request was made in South Carolina was objected to and

1 no response was made. But because BellSouth is generally consistent with its practices
2 across the states it serves, the results in South Carolina should be expected to match
3 those from Florida. Indeed, AT&T admitted that the results should be equally applicable
4 everywhere in a pleading filed in Alabama.

5 **Q: So if BellSouth waived the Line Connection Charge for its own end users taking**
6 **basic service plus the TouchStar blocking features, why did BellSouth not extend**
7 **the promotion pricing to dPi?**

8 A. Frankly, because the amounts dPi was entitled to under the promotion were so
9 large. There has followed a parade of excuses, some more initially plausible than others,
10 but ultimately, all false.

11 **Q: How do you know BellSouth refused to extend the promotion pricing to dPi because**
12 **the amounts dPi was entitled to under the promotion were so large?**

13 A. Because BellSouth said so in just so many words. In 2006, dPi deposed
14 BellSouth's Kristy Seagle, who was the person at BellSouth who headed up the
15 promotion crediting process. A copy of her deposition is attached as dPi Exhibit 7. She
16 had been in the position for two years (Seagle depo 8) and no one at BellSouth knew
17 more about the process than her (Seagle depo 27-28). She was in charge of processing
18 dPi's credit requests. Ms. Seagle testified that the credit requests were received in
19 September 2004 but no payments or denials made until April 2005. (Seagle depo 37-39).
20 The credit requests were initially not paid simply because the amounts seemed so large:

21 The red flag went off for me initially because the dollar amount was so
22 high. I just -- I guess I don't deal in those large of dollars. It just shocked
23 me, shocked me and made me start looking at what we were doing.
24 (Seagle depo 46-47).

25 ***

1 and that's when I stopped everything that we were doing at that point
2 from October 2004 until April 8, 2005, nobody was credited for those
3 promotions..... (Seagle depo 39-40).

4 At this point, (September/October 2004) BellSouth put together a team of lawyers
5 and retail and marketing managers to find see if there was a way to avoid paying the
6 promotions. *See* Seagle depo 40-56.

7 From September 2004 to April 2005, BellSouth was unable to satisfactorily
8 explain why it was refusing to pay these credits. On numerous occasions over this
9 period, BellSouth's Kristy Seagle and/or other employees promised that these payments
10 would be forthcoming. *See* dPi's Exhibit 5, copies of email communications between the
11 parties on this subject.

12 It appears that over the period of September 2004 to April 2005, BellSouth
13 seemed to be floating "test balloons" about possible reasons for not paying the credits.
14 For example, during the fall of 2004, it was suggesting that it might deny dPi the credits
15 requested because the orders submitted would not qualify because they were not for
16 "winover" or "reacquisition" customers. However, because (unlike BellSouth) dPi sells
17 primarily to the credit challenged customer, essentially every single one of dPi's new
18 customers is someone who was formerly a customer of BellSouth or another provider and
19 who left after getting into trouble over their phone bill.

20 Another reason initially advanced for not issuing the credits was for the supposed
21 reason that the TouchStar Blocking Features dPi used to qualify for the LCCW were
22 really not "features." This reason was withdrawn (though it has now reappeared in sister
23 states) after dPi pointed out that the TouchStar Blocking Features appear in the various

1 state tariffs where they are listed with other features, and are specifically referred to as
2 features. Furthermore, BellSouth employees repeatedly referred to these features as
3 features during communications between the parties; and BellSouth characteristically
4 referred to and charged for these things as features under the UNE regime.

5 Finally, in about April of 2005, BellSouth stated that it would not be paying these
6 credits applied for almost entirely on the grounds that dPi had not qualified for the credits
7 because, notwithstanding the fact that dPi had purchased BellSouth's basic service with
8 two or more Touchstar features, the Touchstar features that dPi had included in its orders
9 (e.g., BCR and BRD blocks)⁵ "did not count" because BellSouth did not have a separate
10 charge for these particular Touchstar features.

11 In North Carolina, Florida, and Alabama, (97%, 98%, and 92% respectively) the
12 overwhelming majority of the time credit requests were denied, they were denied because
13 Bellsouth decided the order did not have the requisite number of TouchStar features apart
14 from the TouchStar Blocking Features. Here in South Carolina, this was the reason
15 behind **100%** of BellSouth's LCCW promotion credit denials for the months of January,
16 March, May, August, and December of 2004, and May of 2005; the reason behind 90%
17 of the credit denials for remaining months of 2004, and the vast majority of remaining
18 months of 2005. *See* dPi Exhibit 4.

5

dPi's customers are largely pre-paid. dPi's most basic offering generally includes basic service, plus a number Touchstar Blocking Features, including (among others) the BCR and BRD Touchstar blocks, which are used to guarantee the customer's wishes to have his or her phone expenditure capped and not permit access to "per use" charges. Other features can be added at the customer's request.

1 **Q. Is there any merit to BellSouth’s contention that the TouchStar Blocking Features**
2 **are not features?**

3 A. No. The TouchStar BCR, BRD, and HBG blocking features are described in the
4 TouchStar feature portion of Bellsouth’s tariffs filed in various states, where they are
5 listed with other features, and are specifically referred to as features. *See* dPi’s Exhibit
6 1, an excerpt from a tariff. Furthermore, BellSouth employees repeatedly referred to
7 these features as features during communications between the parties; *see* dPi Exhibit 5.
8 Their website’s USOC decoder also decodes these USOCs as being TouchStar features.
9 Finally, in the UNE arena, these USOCs are listed and charged as “features.”

10 **Q. Is there any merit to Bellsouth’s contention that the LCCW can be awarded only**
11 **when additional features are purchased for additional cost?**

12 A. Again, essentially none. The fact of the matter is that all that is required to
13 qualify for these promotion is the purchase of basic service with two (or sometimes one,
14 if you use the promotion description from Bellsouth’s website) TouchStar features. In
15 every case where BellSouth denied credit on the grounds that dPi did not qualify because
16 it had not purchased BellSouth’s basic service with two features, dPi *had* in fact taken
17 BellSouth’s basic service with at least two additional TouchStar features, such as the
18 BCR and BRD blocks, among others. BellSouth simply chooses not to “count” these
19 features. There is no dispute that the blocks ordered are listed by BellSouth as TouchStar
20 features in their tariff. Moreover, BellSouth has paid credits to other carriers, such as
21 Budget and Teleconnex, with the same service orders (i.e., basic service plus TouchStar
22 Blocking Features) in the past. Finally, Bellsouth issues credits to its own retail

1 customers taking basic service plus TouchStar Blocking Features, and decreased the rate
2 at which it did so only after it decided to “re-interpret” the language of the promotion in
3 2005 so as to avoid paying these credits to CLECs. BellSouth has simply been
4 fabricating an excuse to avoid having to pay these credits to dPi.

5 **Q. Does BellSouth owe dPi any amounts for wrongfully denying promotion credits for**
6 **this reason?**

7 A. Yes. Our billing agent (Lost Key) has calculated that BellSouth has wrongfully
8 denied at least \$185,719.49 in promotional credits, almost entirely on the line connection
9 charge waiver alone. There are also credits owed for other promotions, such as the
10 Secondary Service Charge Waiver promotion and the Two Features For Free promotion
11 which were improperly denied.

12 **Q. Did BellSouth fail to credit dPi for any other reasons?**

13 A. As in other states we saw here in South Carolina that a credit was denied because
14 it was not a “reacquisition” or a “winover” account or because dPi also inadvertently
15 submitted duplicate requests. Again, however, the vast majority of times a request was
16 rejected – on the order of 95% – was because the Touchstar Blocking features were not
17 counted as qualifying features for the LCCW.

18 **Q. Does this conclude your direct testimony?**

19 A. Yes, it does for now. But I reserve the right to make changes as necessary.